IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1022 of 1999

with
Criminal Misc. Application No.10115 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMADKHAN @ BABU MOHMAD JAVEDKHAN
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1022 of 1999
MR DEEPAK M SHAH for Appellant
Mr. I.M. Pandya, APP, for Respondent

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 21/04/2005

C.A.V JUDGEMENT

(Per : HON'BLE MR. JUSTICE ANANT S DAVE)

This appeal by the present appellant-accused has been preferred being aggrieved by the judgment and order dated 19-8-1999 passed by the learned Addl. Sessions Judge, Court No.10, Ahmedabad City, in Sessions Case No.306 of 1998 whereby the appellant was convicted for the offence under Secs.8-C, 20-B and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act' for Short) sentencing to suffer R.I. for ten years and to pay fine of Rs.1.00 lakh and in default, to undergo further R.I. for one year.

2. The brief facts of the case are that on 4-8-1998 when P.I., Mr.M.B.Solanki, P.S.I., Mr.J.T.Chudasma and other police personnel of DCB Police Station, Ahmedabad City, were sitting in their office, Police Constable, Mr.Nasirkhan Hebatkhan, Buckle No.5733, gave a secret information that one person named Ahmedkhan @ Babu, son of Mahmad Javadkhan Pathan, resident of Ajit Mill, having narcotic substance in pink colour packet is likely to come from Soni-ni-Chawl to pass through Gita Gowri Cinema towards Amraiwadi. Said information was reduced in writing by the concerned Police Officer and it was passed on to the superior officer in writing by making relevant entry in the station diary being Entry No.9/98. Thereafter, two panchas were called and were made to understand the information received and the raid to be carried out. As they agreed to act as panchas, preliminary panchnama was drawn in the police station which was signed by panchas and police officers. Thereafter, raiding party consisting of PSIs, Mr.Chudasma, B.T.Karoliya and Police Constables, Nasirkhan Hebatkhan and Pratapsinh Sardarsinh and other persons proceeded in Government vehicles and kept a vigil at the place of information. On arrival of accused, he was identified by Nasirkhan Hebatkhan and when he was coming towards their direction, he was stopped and his name was asked. As he told his name as Ahmedkhan @ Babu, son of Mahmad Javadkhan Pathan, he was informed that based on the information received by them, they wanted to carry out search on him and therefore, he was asked to exercise his option to carry out search in presence of Magistrate or Gazetted Officer to which, he denied and the raiding party was permitted to carry out search. Upon the search being carried out on his person, from the pink colour cloth bag in his hand, contraband article of charas in 13 packets were found and after preliminary examination, Officer of FSL was called on the spot and also directed Police Constable, Nasirkhan to call the

weighing person. FSL expert on verification opined the muddamal to be of charas. The muddamal was found to be weighing 2 kg. and 800 gms. Two samples weighing 50 gms. each were taken separately and were placed in separate tins. Rest of the muddamal was also placed in another big tin by affixing the slip signed by panchas and police officers and was properly sealed. Thereafter, complaint was filed by the complainant, Mr.Chudasma on behalf of the State and thereafter, the complaint, panchnama, muddamal, primary FSL report together with the accused were sent to concerned Police Station for registering the offence where it was registered as DCB Police Station Prohi. C.R. No.5018 of 1998 against the accused for the offence under Secs.8-C, 21, 22, 29 etc. of the Act. Thereafter, investigation was handed over to Devendragiri Himmatgiri and muddamal was handed over to Crime Writer Head who made entry in Anamat Register by taking the muddamal in custody. Simultaneously further investigation was started by Devendragiri. On receiving the FSL report, it was tied with the investigation papers. During the course of investigation, muddamal was sent to FSL and at the end of investigation, charge-sheet was submitted against the accused. When accused appeared before the concerned Court, charge was framed against the accused for the offences punishable under Secs.8-C, 20-B, 21, 22 and 29 of the Act. Accused pleaded not guilty to the charge and claimed to be tried.

3. To prove the guilt against the accused, the prosecution examined, in all, the witnesses namely, Rajeshkumar Lalbhai, the panch witness, as P.W.No.1 at Ex.8; PSI, J.T.Chudasma, the person who received information from Police Constable, Nasirkhan, as P.W.No.2 at Ex.10; Madarsinh Mansinh, the PSO working at the relevant time, as P.W.No.3 at Ex.14; Rumalji Shivaji, the Police Constable, who entered the muddamal in Anamat register as Crime Writer Head and kept the muddamal in his custody, as P.W.No.4 at Ex.18; Bismillakhan Abbaskhan, Head Constable, the person who took the muddamal to FSL, as P.W.No.5 at Ex.20; Madarsinh Bhikhaji Solanki, the person who reduced the information in writing and seized the muddamal from the accused, as P.W.No.5 at Ex.22 and Devendragiri Himmatgiri, PSI, who investigated into the matter as P.W.No.6 at Ex.25. The prosecution also relied upon certain documents viz., panchnama Ex.9; copy of arrest memo explaining reasons for arresting the accused Ex.23; copy of arrest memo Ex.24; complaint Ex.11, report under Sec.157 of Cr.P.C. Ex.16; abstract from station diary Ex.15; copy of muddamal pavti Ex.17; abstract from Anamat Register Ex.19; letter intimating the superior officer about the

information received Ex.30; letter to Deputy Commissioner of Police by PSI, Mr.Solanki, after completion of raid Ex;31; forwarding letter sending muddamal to FSL Ex.26; FSL receipt Ex.21 and report of FSL Ex.27.

4. Mr.Deepak M. Shah, learned counsel representing the appellant, producing a letter dated nil received from the mother of the appellant with the original envelope, has made a statement at the bar that in view of the same, he does not want to proceed further with the matter. Same is ordered to be taken on record.

5. It is pertinent to note at this stage that the said application dated 5.8.2004 is addressed by Rabiyabibi Mohmad Javvadkhan Patan, resident of Shantinagar, Ajit Mill, Rakhial Road, Ahmedabad. It is signed in Urdu in presence of two witnesses, Shri Ataulla Kitabullakhan and Shri Mohmad Yunus Shabbir Ahmed Julha Ansari.

6. We have asked Shri Deepak M. Shah, learned counsel for the appellant, about the genuineness of the application, and he has stated that he had received an envelop from Rabiabibi which contained this application and, subsequently, on an enquiry by him, he was told that the applicant was no more interested to pursue the said application.

7. At this stage, it is pertinent to note that Criminal Misc. Application No.10115 of 2003 was filed by said Rabiabibi contending that the son of the applicant was juvenile and below the age of 18 years and, therefore, he ought to have been tried by the Juvenile Justice Court and not by the Designated Court. In support of the said application, she has produced a certificate of birth issued by the Officer of the Bapungar Ward of Ahmedabad Municipal Corporation, which mentioned the date of birth of Khan Mohmad Ahmad as 1.12.1984 and the name of the father as Mohmad Javvadkhan Ishakhan and the name of the mother as Rabiabibi.

8. The Division Bench (Coram: J.M. Panchal & M.R. Shah JJ.), in the order dated 5.5.2004, observed that at the time of hearing of this application, a doubt had taken place as to why certificate was obtained on October 30, 1999 mentioning that the date of birth of Ahmadkhan was December 1,1984 and registered on October 20, 1999, i.e. after conviction of Ahmadkhan by judgment dated August 19, 1999. Therefore, the Court had orally directed the learned APP. to inquire as to whether

certificate produced by the applicant indicating the date of birth of Ahmadkhan to be December 1, 1984 was genuine or not. The learned APP has, in turn, asked the competent officer of the Crime Branch, Ahmedabad City, to look into the matter. The inquiry made by Police Sub-Inspector, Crime Branch, Ahmedabad City, indicated that the certificate was issued on the basis of order dated October 20, 1999 passed by the learned Magistrate. Mr. B.A. Patel, P.S.I. Crime Branch, Ahmedabad City, has submitted report mentioning that the Court had passed order on the basis of the School Leaving Certificate produced before him, but the School Leaving Certificate was bogus and forged one. This report is based on communication dated May 5,2004 made by the Administrative Officer, Nagar Prathmik Shikshan Samiti, Ahmedabad, to the P.S.I., Crime Branch. Therefore, the report made by the P.S.I. along with the accompanied documents was ordered to be taken on the record of the case by the Court.

9. A bare perusal of the report submitted by the PSI, Crime Branch, Ahmedabad City, containing the letter addressed by the Administrative Officer, Nagar Prathmik Shikshan Samiti, Ahmedabad, clearly shows that the school leaving certificate of Shri Khan Mohan A M. Zaved submitted by the concerned person is bogus and forged one. On verification of the record of School No.3 of Rakhial, it was found that the said school is exclusively for the girls and, therefore, no occasion arises to issue a school leaving certificate of a boy who could never study in the said girls' school. Even in the concerned record of the school maintained by the school, no certificate on 5.7.1996 was given and even certificate book No.11 and certificate No.290 was mentioned incorrectly.

10. Therefore, the claim of the applicant given, on scrutiny of the record, is found to be incorrect even before this Court also it is not established that the accused-appellant was aged 17 years or under 18 years age. Looking to the totality of the circumstances, it is not borne out from the record of the Sessions Case that the accused-appellant was aged 17 years or under 18 years age. The attempt made by the mother of the accused to prove the age of the accused below 18 years has also failed and, therefore, the only contention raised by learned counsel for the appellant that the accused being under 18 years of age ought to have been tried by the Juvenile Justice Court, does not stand to the scrutiny of the record and it is held that the trial under the NDPS Act for the offences punishable under Sections 8C, 20B

and 21 of the NDPS Act is rightly proceeded and no order is required to be made in this behalf.

11. Learned counsel, Mr. Deepak M. Shah, has relied upon the judgment of this Court in Ganpatlal Mohanlal Vishnoy vs. State of Gujarat, 2004 (2) G.L.H. 524, giving benefit of Section 33 of the NDPS Act, 1985 in a case of young boy who was aged about 19 years. In the facts and circumstances of that case, as discussed in paragraph 8 of the judgment, the benefit of Section 33 of the NDPS Act was given to the accused and the punishment imposed by the trial court of five years R.I. and fine of Rs.25,000/- was modified and reduced to a period of three years, the period which was already undergone by the accused in that case, and the imposition of fine was not altered. The said benefit was given by the Court in the said case by interpreting Section 33 of the NDPS Act and the Court has found that the said provision is clearly in favour of victimology and, therefore, the teenagers upto 18, 19 or even 20 years of age can be considered for the benefit of scheme of Section 33 of the NDPS Act, keeping in mind other facts and socio-economic background of the convict.

12. We are not impressed by the arguments canvassed by learned counsel for the appellant on the basis of the aforesaid judgment in Ganpatlal Mohanlal Vishnoy (supra). Section 33 reads as under:

> "33. Application of section 360 of the Code of Criminal Procedure,1973 and of the Probation of Offenders Act, 1958.-
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> Nothing contained in Section 360 of the Code of Criminal Procedure,1973 (2 of 1974) or in the Probation of Offenders Act, 1958 (20 of 1958) shall apply to a person convicted of an offence under this Act unless such person is under eighteen years of age or that the offence for which such person is convicted is punishable under section 26 or section 27."

13. A bare perusal of the said Section containing specific usage of words clearly envisages that nothing contained in Section 360 of the Code of Criminal Procedure, 1973 or in the Probation of Offenders Act, 1958 shall apply to a person convicted of an offence under this Act unless such person is under eighteen years of age or that the offence for which such person is convicted is punishable under section 26 or section 27.

14. We are concerned with the case of an accused whether the age of the accused who is to be given the

benefit of this Section has to be under 18 years.

15. It is well settled principle of statutory interpretation that the Courts should read the statutes literally by giving to the words their ordinary, natural and grammatical meaning. It is not open for the Court to construe the words of the statute in a different meaning than what is envisaged by the Parliament or Legislature. A word cannot be added or deleted to give a particular meaning to the Section or the Statute. In a reported decision in Jugalkishore Saraf v. Raw Cotton Co. Ltd., AIR 1955 Supreme Court 376, while dealing with Order 21 Rule 16 of the Code of Civil Procedure, 1908, the Apex Court had applied the rule of literal construction and held that the said provision contemplates actual transfer of a decree by an assignment in writing after the decree is passed. The Court, speaking through Honourable Justice S.R. Das, observed as under:

> "The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But, if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation. In the present case the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction."

16. Time and again, the said rule has stood the scrutiny of the Apex Court in various other cases and even in Harbhan Singh v. Press Council of India, AIR 2002 Supreme Court 1351, while interpreting sub-section (7) of section 6 of the Press Council Act, 1978, which provides, 'a retiring member shall be eligible for renomination for not more than one term', the Apex Court applied the literal and grammatical meaning of these words and held that the provision applied to a member "just retiring". While holding so, the Apex Court, speaking through Honourable Justice R.C. Lahoti, observed that the Legislature chooses appropriate words to express what it intends and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material intrinsic or

external - is available to permit a departure from the rule. Therefore, the law laid down qua Section 33 of the NDPS Act, 1985, as reported in Ganpatlal Mohanlal Vishnoy vs. State of Gujarat, 2004 (2) G.L.H. 524, is not the correct position of law and cannot be therefore applied in the present case.

17. Therefore, the judgment, extending the benefit of Section 33 of the NDPS Act given to the accused in Ganpatlal Mohanlal Vishnoy (supra) , cannot be considered to be a binding judgment and, therefore, on the basis of the discussion in the aforementioned paragraphs, we hold that the language used in Section 33 of the NDPS Act clearly envisages a situation for conferring benefit of this provision, where the accused is of under 18 years of age and the Court cannot add, alter or delete any further a word in the said Section, meaning thereby, the said Section and usage of words contained therein are required to be interpreted as such and no deviation is permitted by stretching or enlarging the scope of definition of "under the age of 18 years" to the accused of 19 years and 20 years respectively. We, therefore, do not apply the said law, as declared by this Court, contrary to the well established principle of law of statutory interpretation and, therefore, the aforesaid case law is of no help to the accused.

18. The other issues raised for determination of this Court as such do not require any detailed scrutiny by this court in view of the submission made by learned counsel for the appellant-accused that he has restricted his arguments on the benefit given to the accused under Section 33 of the NDPS Act that too subsequently not carried out to its logical end. However, we deem it proper even to take into consideration other grounds raised in the appeal and have perused the record, and on a detailed scrutiny of evidence - oral as well as documentary, we do not find any substance about non-compliance of the mandatory provision of Sections 42 and 50 of the NDPS Act.

19. Shri Chudasma has clearly stated that the information, which was received, was reduced in writing and in his version, he is fully supported by Shri Solakni that the information was reduced in writing and both of these versions are supported by the documentary evidence, which is produced on record at Exh.15. It is also made clear by Shri Solanki that entry No.9 was written by him and was also signed by him, in which, all the relevant

aspects of the information have been written by him. So far as the information given to the superior officer before the raid was carried out and, thereafter on completion of the raid, is concerned, Exh.30 is the evidence, which clearly establishes the fact that the letter was written to the Deputy Commissioner of Police by PSI, Shri Solanki after completion of the raid. Therefore, there is enough compliance of Section 42 of the NDPS Act and the learned Additional Sessions Judge has not committed any infirmity and rightly held that there was compliance of Section 42 of the NDPS Act.

20. So far as compliance of Section 50 of the NDPS Act is concerned, the learned Additional Sessions Judge has elaborately discussed the facts and circumstances, by which it is established that the accused was given an option to be searched by a Gazetted Officer or by the concerned Magistrate. The deposition of Shri Chudasma clearly established the fact that there was compliance of requirement of Section 50 of the NDPS Act. On this aspect of compliance of Section 50 of the NDPS Act also, no interference is called. In appreciating the evidence, it is clearly established that there was no lacuna on the part of the prosecution to prove this point beyond any reasonable doubt.

21. So far as the safe custody of the muddamal is concerned, the muddamal was found in a sealed condition by the FSL and after the analysis it was established that the muddamal was a contraband article and was in the form of a narcotic drug, which was found in quite a huge quantity of 2 kgs 800 grams. So far as such huge quantity is concerned, no question of plantation of muddamal arises. The learned Judge has rightly relied upon the case law reported in 1999(1) GLH p.862 that if at all the deposition of evidence of the Police Officer is found to have been reliable, trustworthy and truthful, it can be accepted as supporting prosecution case and even conviction can be based thereon. Therefore, relying on the deposition of two Senior Police Officers in the present case about the compliance of mandatory provision of Sections 42 and 50 of the NDPS Act, the learned Additional Sessions Judge has rightly held that the said provisions have been followed in accordance with law and even the muddamal which was seized by Shri Solanki and thereafter handed over to PSO, Madarsingh Mansinh, who is examined at Exh.14 has clearly stated that the muddamal was handed over to him in a sealed condition and, thereafter, it was given by him to the Crime Writer Head

who is examined at Exh.18. He clearly stated that, in the same night, at 8 p.m. the muddamal was given to him, which was kept by him in the safe custody and, thereafter, on the next day, he had handed over the said muddamal to one Shri Bismillakhan, who was examined at Exh.20, and deposed that the muddamal was taken by him to the FSL and the receipt was also received from the FSL by him. Therefore, the learned Additional Sessions Judge has rightly held that proper link has been maintained by the prosecution and there is no reason to believe otherwise about tampering with the muddamal.

22. Having established by the prosecution the evidence documentary as well as oral against the accused as discussed by us in the foregoing paragraphs, no infirmity is found in the judgment and order of the learned Additional Sessions Judge in convicting the accused for the offence under Sections 8-C, 20-B and 21 of the NDPS Act. None of the grounds raised in the appeal is sufficient enough to reverse the findings recorded by the learned Additional Sessions Judge in the judgment and order dated 19-8-1999 in Sessions Case No.306 of 1998.

17. As a result of foregoing discussion, the appeal fails and is dismissed. Consequently, Criminal Misc. Application No.10115 of 2003 is dismissed.

(R.P. Dholakia)
Judge

(Anant S. Dave)
Judge

(swamy)